

UKPEAGVIK INUPIAT CORP.

IBLA 81-489

Decided November 22, 1982

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting application for mineral material sites for sand and gravel. F-72943.

Reversed and remanded.

1. Alaska Native Claims Settlement Act: Generally -- Alaska Native Claims Settlement Act: Native Village Selections -- Materials Act

While an Alaska Native village corporation, organized for profit under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 (1976), does not qualify for a free-use exemption under the Materials Disposal Act of 1947, as amended, 30 U.S.C. § 601 (1976), it may apply to purchase sand and gravel under that Act and the mineral sales regulations at 43 CFR Part 3610.

APPEARANCES: Michael Robbins, Esq., Anchorage, Alaska, for appellant; Bruce E. Schultheis, Esq., Regional Solicitor's Office, Anchorage, Alaska, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Ukpeagvik Inupiat Corporation (UIC) has appealed a letter determination dated February 20, 1981, of the Alaska State Office, Bureau of Land Management (BLM), rejecting its application for mineral material sites (sand and gravel) F-72943.

UIC is a village corporation organized pursuant to the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. §§ 1601-1610 (1976), as a business for profit.

Appellant filed its application under section 102 of the Act establishing the National Petroleum Reserve in Alaska, 42 U.S.C. §§ 6501, 6502 (1976). Appellant applied for exclusive rights to a number of mineral deposits located

in the vicinity of the Native village of Barrow. The application states that appellant intended to use the sand and gravel for road construction, airport expansion, and enhancement of fishery habitat. ^{1/}

The decision appealed from rejected the application for the following reasons:

Native Village Corporations, such as U.I.C., have been incorporated within the State of Alaska as profit-making corporations and are not regarded by the U.S. Department of the Interior's Solicitor's Office as complying with the term "Alaska Natives" as used in P.L. 94-258.

Further, the Bureau of Land Management's regulations concerning the free use of mineral materials, as found in 43 CFR, Part 3620, are restricted to free use permits to governmental units and very limited permits to non-profit organizations. No such free use permits can be issued to individuals or to profit-making corporations.

The pertinent portion of 42 U.S.C. § 6502 (1976) designating the National Petroleum Reserve in Alaska, provides as follows:

Subject to valid existing rights, all lands within the exterior boundaries of such reserve are hereby reserved and withdrawn from all forms of entry and disposition under the public land laws, including the mining and mineral leasing laws, and all other Acts; but the Secretary is authorized to (1) make dispositions of mineral materials pursuant to the Act of July 31, 1947, as amended, for appropriate use by Alaska Natives, (2) make such dispositions of mineral materials and grant such rights-of-way, licenses, and permits as may be necessary to carry out his responsibilities under this Act, and (3) convey the surface of lands properly selected on or before December 18, 1975, by Native village corporations pursuant to the Alaska Native Claims Settlement Act. All other provisions of law heretofore enacted and actions heretofore taken reserving such lands as a Naval Petroleum Reserve shall remain in full force and effect

^{1/} The text of the letter of application reads:

"U.I.C. intends the orderly management and utilization of materials contained in these surface locations for use in private developmental activities and for maintenance and development of public services by and for the Native community of Barrow. Such uses include, e.g., road construction, site preparation and airport expansion.

"In addition, sand and gravel is essential to preservation of subsistence fishing through enhancement of fishery habitat. This can be accomplished by establishing and expanding spawning grounds for whitefish and the several anadromous species which occur in the area. Such fisheries have been seriously depleted as a result of seismic exploration in the rivers and lake systems of the Eskimo community."

to the extent not inconsistent with this Act. Pub.L. 94-258, Title I, § 102, Apr. 5, 1976, 90 Stat. 303.

The legislative history of 42 U.S.C. § 6502 (1976) reads in relevant part:

Inasmuch as the Alaska Native Claims Settlement Act authorized native village corporations to select certain Federally owned land in Alaska, including the right to apply for surface rights within the Naval Petroleum Reserve until December 18, 1975, this legislation authorizes the Secretary to convey such surface interests if the selections were made on or before that date, but in no event does the legislation authorize the disposition of the subsurface mineral estate within the national petroleum reserve to any person or group, except for mineral materials (e.g., sand, gravel, and crushed stone, which for the purpose of this legislation are considered to be a part of the subsurface mineral estate) which the Secretary may permit to be used for maintenance or development of local services by native communities or for use in connection with activities associated with administration of the reserve under this Act.

H.R. Rep. No. 942, 94th Cong., 2nd Sess. 20, reprinted in [1976] U.S. Code Cong. & Ad. News 492, 522. The Act of July 31, 1947, as amended, 30 U.S.C. § 601 (1976), governs the disposal by the Secretary of such materials as sand and gravel on public lands. Section 601 states in part:

Such materials may be disposed of only in accordance with the provisions of this subchapter and upon the payment of adequate compensation therefor, to be determined by the Secretary: Provided, however, That, to the extent not otherwise authorized by law, the Secretary is authorized in his discretion to permit any Federal, State, or Territorial agency, unit or subdivision, including municipalities, or any association or corporation not organized for profit, to take and remove, without charge, materials and resources subject to this subchapter, for use other than for commercial or industrial purposes or resale. [Emphasis in original.]

The applicable regulations are found at 43 CFR Parts 2360 and 3600.

In the statement of reasons, appellant places great emphasis on the definitional provisions of ANCSA, contending that under the definitions of Native, Native village, Native village corporation, among others, UIC is fully qualified to make application for mineral materials on behalf of its Native shareholders. Appellant points out that it did not request free use of gravel in its application and that it is fully prepared to compensate the United States for any materials obtained. Counsel for BLM maintains that under 42 U.S.C. § 6502 (1976) the Secretary is precluded from disposing of sand and gravel to UIC. At page 2 of the reply to appellant's statement of reasons, the Solicitor's Office states:

Thus, in summary, the Secretary's authority to dispose of sand and gravel in the National Petroleum Reserve Alaska is

controlled by 42 U.S.C. 6501. That Act provides ". . . for appropriate use by Alaska Natives . . ." 42 U.S.C. 6502 and Alaska Natives are further defined as "Native Communities." U.I.C. is neither an Alaska Native nor a Native Community.

[1] Since appellant does not seek the sand and gravel on a gratuitous basis, we need only consider whether the term Alaska Natives, as used in 42 U.S.C. § 6502 (1976), includes a Native village corporation organized under ANCSA. We conclude that it does.

The only limitation on the Secretary's authority to dispose of sand and gravel is that the material be used by Alaska Natives. As we read the term Alaska Natives, it means Natives collectively or individually. The reference to disposal for use by Native communities in the legislative history supports the plain unrestrictive use of the term, indicating that an all inclusive meaning of the Alaska Natives was intended. Thus, Natives would not be deprived of their right to apply for sand and gravel merely because they are organized as a corporation under the provisions of ANCSA. 43 U.S.C. § 1607(a) (1976). Accordingly, we see no reason why the application should not be considered as filed pursuant to 43 CFR Part 3610. These regulations govern sales of mineral materials and state, for example, that bidders or purchasers must be citizens of the United States, partnerships, associations, or corporations. These regulations provide for negotiated, competitive, and contract sales. Section 601 further provides for the granting of permits to various Governmental units or to nonprofit corporations, where the materials removed will be used for purposes other than commercial, industrial, or resale. The regulations implementing these provisions amplify the "free use" procedures. 2/ Thus, 43 CFR 3621.2 requires a satisfactory showing that materials to be removed will be used for a public purpose, before a permit may be issued to a governmental unit.

We conclude that appellant, as a corporation for profit, is not entitled to the free use exemption, but is fully qualified to apply to purchase the materials sought under the statutes, *supra*. The extent of any grant, however, is committed to the discretion of the authorized officer. We decide here only that the appellant is not barred by statute from obtaining a mineral materials lease. However, we caution appellant that the materials must be used only for "maintenance or development of local services," which we interpret as prohibiting the use of materials for "private development activities."

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed

2/ Under 43 CFR 3621.1(d) the following conditions must be met before a free-use permit may be issued:

"(d) Conditions. A free-use permit, on a form approved by the Director, shall incorporate the provisions, if any, governing the selection, removal, and use of the mineral materials. Free-use permits shall not be issued where the applicant owns or controls an adequate supply of the mineral materials to meet his needs. The material applied for must be for the applicant's own use and may not be bartered or sold. No mineral materials shall be removed until the permit is issued." (Emphasis in original.)

from is reversed, and the case is remanded for further proceedings consistent with the views herein.

Gail M. Frazier
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge

